

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NIPPON SHINYAKU CO., LTD.,
Plaintiff,

v.

SAREPTA THERAPEUTICS, INC.,
Defendant.

SAREPTA THERAPEUTICS, INC. and THE
UNIVERSITY OF WESTERN AUSTRALIA,
Defendant/Counter-Plaintiffs,

v.

NIPPON SHINYAKU CO., LTD. and NS
PHARMA, INC.,
Plaintiff/Counter-Defendants.

C.A. No. 21-1015 (GBW)

DEMAND FOR JURY TRIAL

**NS'S CONCISE STATEMENT OF FACTS IN SUPPORT
OF ITS OPPOSITION TO DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT NO. 2 REGARDING LOST PROFITS**

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Nippon Shinyaku Co., Ltd. and Counterclaim
Defendant NS Pharma, Inc.*

Dated: January 12, 2024

1. Nippon Shinyaku Co., Ltd. (“Nippon Shinyaku”) [REDACTED]

[REDACTED] D.I. 39-5 at Art. 3(2).

2. [REDACTED] NS Ex.

55, Gendron Dep. at 71:13-15.

3. Nippon Shinyaku [REDACTED] (“NS Pharma”) for

[REDACTED] D.I. 426-1 (Ex. 53) NS00036893 at 93-94 ([REDACTED]).

4. The [REDACTED]

[REDACTED] Nippon Shinyaku and NS Pharma. *See, e.g.*, D.I. 426-1 (Ex. 52) NS00065827 (NS Pharma’s [REDACTED])

[REDACTED]”); D.I. 426-1 (Ex. 53) NS00036893 at 97.

5. [REDACTED] D.I. 426-1 (Ex. 53)

NS00036893 at 96 ([REDACTED]).

6. [REDACTED]

D.I. 426-1 (Ex. 53) NS00036893 at 94 ([REDACTED]). [REDACTED]

[REDACTED] NS Ex. 54 (Hosfield Op. Rpt.) at 59-60.

7. [REDACTED]

[REDACTED] D.I. 426-1 (Ex. 53) NS00036893 at 98-99 ([REDACTED]). [REDACTED]

[REDACTED] NS Ex. 55 (Gendron Dep.) at 70:17-71:12.

8. [REDACTED] D.I.

426-1 (Ex. 53) NS00036893 at 99 ([REDACTED]). [REDACTED]

[REDACTED] *Id.* at 98 ([REDACTED]).

9. [REDACTED]

[REDACTED] D.I. 426-1 (Ex. 53) NS00036893 at 98 ([REDACTED]), 06-07 ([REDACTED]

[REDACTED]; NS Ex. 54 (Hosfield Op. Rpt.) at 80 ([REDACTED]

[REDACTED].

10. [REDACTED]

[REDACTED] D.I. 426-1 (Ex. 53) NS00036893 at 97 ([REDACTED]

[REDACTED]; *see also* NS Ex. 56 (Toda Dep.) at 72:5-74:2

([REDACTED]).

11. Historically, [REDACTED]

[REDACTED] *See, e.g.*, NS Ex. 57, NS00091316 ([REDACTED]

[REDACTED]).

12. Likewise, historically, [REDACTED]

[REDACTED] *See, e.g.*, D.I. 426-1

(Ex. 53) NS00036893 at 06-07 (2020); D.I. 426-1 (Ex. 56) NS00036968 (2021); D.I. 426-1 (Ex.

54) NS00091311 (2022); D.I. 426-1 (Ex. 57) NS00091312 (implementing [REDACTED]

[REDACTED]; *see also* NS Ex. 55 (Gendron Dep.) at 110:18-112:13 (“[REDACTED]

[REDACTED]
[REDACTED]; NS Ex. 54 (Hosfield Op. Rpt.) at 23-26 (detailing [REDACTED]).

13. NS Pharma [REDACTED]
[REDACTED]
[REDACTED]. NS Pharma [REDACTED]
[REDACTED] NS Ex. 55 (Gendron Dep.) at 110:18-112:13.

14. NS's expert Mr. Mark Hosfield's "quantification of lost profits damages is based [REDACTED]." NS Ex. 54, Hosfield Op. Rpt. at 60 (emphasis added). To reach that quantification, Mr. Hosfield did "[REDACTED]
[REDACTED]" *Id.*

15. Mr. Hosfield reached his quantification by [REDACTED]
[REDACTED]
[REDACTED] Viltepso[®] for the United States market. NS Ex. 54, Hosfield Op. Rpt. at 76-78.

16. Mr. Hosfield also analyzed whether Nippon Shinyaku and NS Pharma would have, in the "but-for" world, [REDACTED]. *See* NS Ex. 54, Hosfield Op. Rpt. at 61-72. Mr. Hosfield concluded:

[REDACTED]
Id. at 78 (also accounting for [REDACTED]
[REDACTED]).

17. Mr. Hosfield explains that "[REDACTED]

[REDACTED]” NS Ex. 54, Hosfield Op. Rpt. at 79 (“[REDACTED]”); *see also supra* NS Counter-Facts 2-3, 5-8.

18. Mr. Hosfield concluded that, in the but-for world, Nippon Shinyaku [REDACTED] NS Ex. 54, Hosfield Op. Rpt. at 80-81; *see also* NS Ex. 55 (Gendron Dep.) at 111:16-112:4 (“[REDACTED]”).

19. Sarepta/UWA expert Mr. John Jarosz merely summarizes case law addressing the “inexorable flow” doctrine. D.I. 427 (Ex. 10) Jarosz Reb. Rpt. ¶¶ 169-174. Mr. Jarosz provides a competing lost profits estimate and does not dispute that, [REDACTED] *See id.* ¶¶ 169-75.

20. Mr. Jarosz does not critique Mr. Hosfield’s lost profits opinions based [REDACTED] *See generally* D.I. 427 (Ex. 10) Jarosz Reb. Rpt. ¶¶ 107-175. His rebuttal report mentions [REDACTED] only once. *Id.* ¶ 213.

21. [REDACTED] *Id.* ¶ 3.

Dated: January 12, 2024

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CERTIFICATE OF SERVICE

I, Amy Dudash, certify that on January 12, 2024, I caused a copy of the foregoing document which was filed under seal, to be served via electronic mail on the following counsel of record:

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